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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ROBERT B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ROBERT B., Defendant and Appellant.	G027680 (Super. Ct. No. DL005136) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Joy W. Markman, Judge. Affirmed.

Patricia A. Andreoni, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Rhonda L. Cartwright-Ladendorf and Melissa A. Mandel, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

After a police officer stopped minor Robert B. and found him carrying ceramic chips from a spark plug, the district attorney filed a petition in the juvenile court alleging he possessed burglary tools. (Pen. Code, § 466; all further statutory references are to this code unless otherwise indicated.) Minor unsuccessfully tried to suppress evidence acquired by the police, claiming his initial detention violated the Fourth Amendment to the United States Constitution. He then admitted the petition's allegations and received probation.

On appeal, minor initially challenged only the juvenile court's denial of his motion to suppress evidence. When Division One of this district issued its opinion in *People v. Gordon* (2001) 90 Cal.App.4th 1409, we requested the parties brief the question of whether possession of ceramic spark plug chips could support conviction under section 466. We now conclude possession of these items can support a conviction, and the police did not unlawfully detain minor. Thus, we affirm the judgment.

FACTS

Late one evening, police officer Scott Millsap received a radio call concerning a possible fight at a local youth facility. Upon arriving at the facility, Millsap saw two males, one of whom was minor. Minor wore baggy pants, and had blood on his shirt and an abrasion on his forehead over one inch in diameter. The second individual threw a shiny object behind a parked vehicle.

As Millsap approached, minor placed his hands in his pockets and began to walk away. Millsap ordered minor to stop. Although minor denied possessing a weapon, Millsap decided to conduct a patdown search. As he began to do so, Millsap saw chips from an Autolite platinum spark plug in one of minor's pockets. From his training and experience, Millsap knew the chips were frequently used to commit vehicle burglaries by

breaking a vehicle's windows. The police subsequently learned the shiny object discarded by minor's associate was a beer can.

DISCUSSION

Validity of Minor's Conviction

The first question is whether possession of ceramic pieces from a spark plug can support a conviction under section 466. Although minor's admission of the truth of the petition's allegations precludes him from challenging the sufficiency of the evidence or asserting other claims of error not going to the jurisdiction or legality of the juvenile court proceedings (*In re Uriah R.* (1999) 70 Cal.App.4th 1152, 1157; *In re John B.* (1989) 215 Cal.App.3d 477, 483-484), a plea or admission which amounts to a legal impossibility presents a jurisdictional issue and thus is cognizable on appeal. (*People v. Soriano* (1992) 4 Cal.App.4th 781, 784-785.) The issue presented in this case falls within the latter exception.

Section 466 declares, "Every person having upon him or her or in his or her possession a picklock, crow, keybit, crowbar, screwdriver, vice grip pliers, water-pump pliers, slidehammer, slim jim, tension bar, lock pick gun, tubular lock pick, floor-safe door puller, master key, or other instrument or tool with intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle . . . is guilty" of committing a crime. The statute does not specifically include ceramic spark plug chips. Thus, the question is whether these items can fall within the category of "other instrument or tool" when they are possessed with a burglarious intent.

The purpose of statutory interpretation is to ascertain and effectuate legislative intent. (*People v. Robles* (2000) 23 Cal.4th 1106, 1111; *People v. Smith* (2000) 81 Cal.App.4th 630, 641.) The words of the statute provide the most reliable indicator of legislative intent. (*People v. Gardeley* (1996) 14 Cal.4th 605, 621.) Thus, a

court must first look to the statute's language, giving the words their usual and ordinary meaning, and construing them in context. (*People v. Loeun* (1997) 17 Cal.4th 1, 9.) If the statutory language is clear and unambiguous, the plain meaning of the statute governs because the Legislature is presumed to have meant what it said. (*People v. Robles, supra,* 23 Cal.4th at p. 1111; *People v. Loeun, supra,* 17 Cal.4th at p. 9.)

Courts may look beyond the statutory language to ascertain legislative intent only where a statute is ambiguous, i.e., susceptible to more than one reasonable construction. (*People v. Robles, supra,* 23 Cal.4th at p. 1111; *People v. Gardeley, supra,* 14 Cal.4th at p. 621.) A court should not interpret away clear language to artificially create an ambiguity. (*People v. Loeun, supra,* 17 Cal.4th at p. 9; *Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268.)

By its terms, section 466 makes it a crime to possess certain specified implements "or other instrument or tool with intent feloniously to break or enter into any building, . . . car, . . . or vehicle . . . ." The essence of the offense is possession of one or more of the named items or another implement which is suitable for breaking into structures and vehicles with the requisite burglarious intent. (See *People v. Winchell* (1967) 248 Cal.App.2d 580, 586.) Nothing in the statute suggests the means by which a particular implement accomplishes the unlawful intrusion is a prerequisite to conviction.

Minor conceded he possessed the spark plug chips "with intent to break & enter a vehicle" when admitting the truth of the petition's allegations. Thus, there is no issue concerning the intent element. Millsap testified "suspects . . . use these chips to break windows to gain entry into vehicles." This testimony supports a conclusion ceramic chips are suitable for use in burglarizing vehicles. Indeed, it is difficult to think of any other purpose for one to possess pieces of a spark plug. Consequently, minor's admission and the evidence support the finding he violated section 466.

People v. Gordon, supra, 90 Cal.App.4th 1409 concluded possession of ceramic spark plug chips did not violate section 466. *Gordon* applied the rule of *ejusdem*

generis, which declares general words following the enumeration of particular classes of persons or things are construed as applicable only to persons or things of the same general nature or class as those enumerated. (*Id.* at p. 1412; see *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1160.) *Gordon* noted, "[t]he items specifically listed as burglar's tools in section 466 are keys or key replacements, or tools that can be used to pry open doors, pick locks, or pull locks up or out," and not "devices . . . whose function would be to break or cut glass—e.g., rocks, bricks, hammers or glass cutters . . . ." (*People v. Gordon, supra,* 90 Cal.App.4th at p. 1412.) *Gordon* reasoned, "the test is not whether a device can accomplish the same general purpose as the tools enumerated in section 466; rather, the device itself must be *similar* to those specifically mentioned," and thus "a ceramic piece of a spark plug that can be thrown at a car window is not similar to the burglar's tools listed in the statute. [Citation.]" (*Id.* at p. 1413.)

This reasoning is unpersuasive. *Gordon* failed to consider the purpose of statutory construction, and applied the rule of *ejusdem generis* without finding an ambiguity in section 466. Furthermore, even where the rule of *ejusdem generis* applies, it should be used to effectuate the Legislature's intent, not to defeat it. (*People v. Silver* (1940) 16 Cal.2d 714, 721.) *Gordon*'s approach ascribes to the Legislature an intent to assist law enforcement in capturing only the most pedestrian burglars. A broad interpretation of the phrase "other instrument or tool" allows law enforcement officers to use section 466 to capture the more ingenious burglars as well as those less sophisticated. (See *People v. Lee* (1968) 260 Cal.App.2d 836, 840-841 [under statute making it illegal to be in "any room or place" where narcotics are being used, the term "place" construed to include a car to avoid "defeat[ing] the legislative purpose of eliminating or controlling traffic in narcotics"].)

Had the Legislature intended to limit the nature of implements covered by section 466 as *Gordon* asserts it could have so indicated. For example, section 466.3, subdivision (a) makes it a crime for one, "with intent to commit a theft," to "possess[] a

. . . tool, . . . or device . . . designed to open, break into, tamper with, or damage a coin-operated machine . . . ." In *People v. Lewis* (1985) 171 Cal.App.3d 594, the court reversed a conviction under it where the evidence showed defendant used a boltcutter to open an ice vending machine, noting "[t]here is nothing in the record, or in common experience, which suggests that a boltcutter is an instrument designed for breaking into vending machines, although it may be used for that purpose . . . ." (*Id.* at p. 597.)

Section 466's language reflects its purpose is similar to statutes in other states; deter burglaries by affording law enforcement officers the ability to apprehend would-be burglars before they have the opportunity to commit the offense. (Annot., Validity, Construction, and Application of Statutes Relating to Burglars' Tools (1970) 33 A.L.R.3d 798, 805, § 2(a); see 3 Wharton's Criminal Law (15th ed. 1995) § 333, p. 305.) Cases in other states have affirmed convictions for possession of burglar's tools where suspects possessed unorthodox implements with the intent to commit a burglary. (*State v. Edmonds* (Mo. 1971) 462 S.W.2d 782, 784-785 [adhesive tape]; *State v. Vernor* (Mo.Ct.App. 1988) 755 S.W.2d 283, 284-285 [sledge hammer]; *State v. Ford* (1986) 31 Ohio App.3d 99, 100 [508 N.E.2d 1021, 1022-1023] [tree branch]; *People v. Jones* (1985) 115 A.D.2d 490, 491 [495 N.Y.S.2d 718, 719] [brick].)

In light of the foregoing, where a suspect possesses ceramic spark plug chips with the requisite burglarious intent, a conviction under section 466 is proper. That is the situation presented in this case.

Validity of Minor's Detention

Minor attacks the denial of his suppression motion on several grounds. First, he argues the juvenile court erred in overruling a claim respondent should be required to file a written response to his suppression motion.

Neither Welfare and Institutions Code section 700.1 nor any other statute requires the state to submit written justification for a search or seizure allegedly violating

the United States Constitution's Fourth Amendment. Recently, this court rejected the same argument concerning a motion to suppress evidence under section 1538.5. (*People v. Britton* (2001) 91 Cal.App.4th 1112, 1116-1118.) Although *Britton* involved an adult criminal prosecution while this case involves a juvenile proceeding, its essential holding applies here as well: "There is no real question that the traditional core elements of due process are not adversely affected by permitting the prosecution to respond orally to a motion to suppress. Defendant's 'right to produce evidence and cross- examine adverse witnesses' was not abridged or compromised. [Citation.] Nor were his rights 'to appear by counsel' before an 'impartial decision maker.' [Citation.]" (*Id.* at p. 1117.)

Contrary to minor's claim, *People v. Williams* (1999) 20 Cal.4th 119 does not mandate a written response in this context. That case considered the degree of specificity needed in a suppression motion to preserve an issue for appellate review. It held "under [Penal Code] section 1538.5, . . . defendants must specify the precise grounds for suppression of the evidence in question, and, where a warrantless search or seizure is the basis for the motion, this burden includes specifying the inadequacy of any justifications for the search or seizure. In the interest of efficiency, however, defendants need not guess what justifications the prosecution will argue. Instead, they can wait for the prosecution to present a justification. . . . The degree of specificity that is appropriate will depend on the legal issue the defendant is raising and the surrounding circumstances. Defendants need only be specific enough to give the prosecution and the court reasonable notice. . . ." (*Id.* at pp. 130-131.) A case never constitutes authority for a proposition which is not considered by the court. (*People v. Heitzman* (1994) 9 Cal.4th 189, 209.) *Williams* simply does not consider whether the prosecution's justification need be in writing. Thus, no legal authority compels a written response by respondent when opposing a suppression motion.

Next, minor contends the trial court erred by finding Millsap validly detained him. A police officer may temporarily detain a person where specific, articulable facts exist creating a reasonable suspicion the person is involved in criminal activity. (*Illinois v.*

Wardlow (2000) 528 U.S. 119, 123-124 [120 S.Ct. 673]; *Terry v. Ohio* (1968) 392 U.S. 1, 21 [88 S.Ct. 1868]; *In re Tony C.* (1978) 21 Cal.3d 888, 893.) Millsap received a radio report of a possible fight at a youth facility. Upon arriving at that location, he found minor dressed in recognizable street gang attire and showing signs of having recently engaged in a fight. The individual with minor was observed throwing a shiny object, and when Millsap approached, minor placed his hands in his pockets and walked away. The mere fact the fighting may have ceased before Millsap effectuated the detention did not invalidate his actions. (*United States v. Hensley* (1985) 469 U.S. 221, 227-229 [105 S.Ct. 675].)

Minor also claims the juvenile court erred by overruling his hearsay objection to admitting the contents of the radio report which caused Millsap to investigate the youth facility. To ensure a source is not merely the imagination of a nontestifying officer, when the police arrest or detain a person solely because of information received through police channels, the state must present evidence the officer who originally furnished the information possessed facts justifying the suspect's seizure. (*People v. Madden* (1970) 2 Cal.3d 1017, 1021; *People v. Collin* (1973) 35 Cal.App.3d 416, 420.) An exception to this rule exists where the state circumstantially proves the police did not make up the transmitted information. (*People v. Johnson* (1987) 189 Cal.App.3d 1315, 1320; *People v. Orozco* (1981) 114 Cal.App.3d 435, 444-445.) Millsap's observations upon arriving at the facility satisfied the requirement that the report heard over the radio was not fabricated.

Minor's reliance on *In re Eskiel S.* (1993) 15 Cal.App.4th 1638 is without merit. There the arresting officer relied solely on the information received from a radio broadcast and the fact the minor was fleeing from other police officers. Unlike *Eskiel*, Millsap's on-scene observations corroborated the radio report. Furthermore, to the extent *Eskiel* suggests unprovoked flight is not a legitimate contextual consideration in determining the validity of a temporary detention, it is no longer a correct statement of the law. (See *Illinois v. Wardlow*, *supra*, 528 U.S. at pp. 124-125.)

Finally, minor challenges the validity of Millsap's patdown search. To support this further intrusion on a person's constitutional rights, there must be specific and articulable facts supporting a suspicion the suspect is armed and dangerous. (*Terry v. Ohio, supra*, 392 U.S. at p. 30; *People v. Dickey* (1994) 21 Cal.App.4th 952, 956.) Millsap testified the police had previously received calls concerning the youth facility, some of which involved stabbings and shots being fired. This fact plus the late hour, minor's appearance, his act of sticking his hands in his pockets, and the acquaintance's disposal of an object, provided a sufficient basis for Millsap's decision to frisk minor.

DISPOSITION

The judgment is affirmed.

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RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

BEDSWORTH, J.